

THE HON'BLE SRI JUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No. 20454 OF 2003

Date : 28-01-2006

Between :

J.Isaac John.

...Petitioner

and

High Court of A.P., Hyderabad & Another.

...Respondents

THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No. 20454 OF 2003

ORDER : (Per Hon'ble Sri Bilal Nazki, J)

The writ petition has been filed by a retired District and Sessions Judge, challenging the initiation of disciplinary proceedings and also G.O.Ms.No.86, dated 09.5.2001. By this order, punishment of 10% cut in pension was imposed on the petitioner. An order was also passed on 24.9.2001 by respondent No.1, by which, the period from 14.8.1989 to 30.11.1989 has been treated as on-duty only for the purpose of pension and because of this order, the petitioner lost his benefits of pension. This order is also challenged in the writ petition.

It is submitted in the petition that while petitioner was working as Principal District and Sessions Judge, Karimnagar, certain anonymous complaints were made against him. A preliminary inquiry was conducted by one of the Judges of the High Court. The Preliminary Inquiry Officer submitted a report that there was a prima facie case. The preliminary inquiry report was baseless, as it inquired into the Judicial acts of the petitioner and the statement recorded by the learned Judge did not point out any misconduct. On the basis of the report filed by the learned Judge on 10.12.1985, the petitioner was transferred and posted as Additional District Judge, Kadapa. Later, he was suspended through proceedings dated 18.12.1985 and the suspension was extended from time to time. Petitioner challenged the order of suspension before the Supreme Court. That petition was dismissed. Then, another learned Judge was appointed as Inquiry Officer through proceedings dated 18.12.1985. Charges were framed on 04.02.1986. The petitioner gave his explanation and Inquiry Officer conducted an inquiry during March and April, 1986 and submitted a report on 10.09.1986, holding charge Nos.1 to 4 proved. Petitioner was exonerated from Charge No.5. A copy of the report was given to the petitioner and his explanation was sought. Again, at this stage, the petitioner went to the Supreme Court. The Supreme Court dismissed the writ petition filed by the petitioner, on 22.01.1987 and asked him to approach the High Court under Article 226 of the

Constitution. Accordingly, he filed writ petition No.910 of 1987, which was also dismissed on 11.8.1987. Writ Appeal No.208 of 1987 was preferred, which was also dismissed on 25.08.1987. S.L.P. was filed. The Hon'ble Supreme Court directed the petitioner to submit explanation to the show cause notice. Petitioner submitted his explanation and he was retired compulsorily by order dated 08.08.1989. He preferred an appeal to the Government. Appeal was pending before the Government and Government was considering whether an appeal was available against an administrative order passed by the High Court. In the meantime, the judgment of Supreme Court came. Meanwhile, the petitioner attained the age of superannuation on 30.11.1989. By proceedings dated 05.09.1989, a show cause notice was issued to the petitioner by respondent No.1, directing him to submit an explanation as to why the suspension period from 21.02.1989 to 14.08.1989 should not be treated as on-duty only for the purpose of pension and not for any arrears of salary. Petitioner submitted his explanation on 28.9.1989 and respondent No.1, through proceedings dated 26.6.1990, confirmed the decision taken on 05.09.1989.

The petitioner further submitted that since **T.L.N. Chary's** case was pending before the Supreme Court, the authorities did not take any decision in matters concerning employment, although he had made even a mercy petition on 07.4.1992 requesting to treat the period of suspension as on-duty. According to the petitioner, Government seems to have written a letter to the High Court and High Court seems to have written back through proceedings dated 04.5.2000. Thereafter, respondent No.2 issued Memo dated 30.11.2000 through which, the punishment imposed on petitioner by respondent No.1, was set aside, and it was decided to take action against the petitioner in terms of Revised Pension Rules. High Court recommended nominal cut in pension. Through proceedings dated 30.11.2000, petitioner was asked to submit his explanation as to why a cut of 20% in his pension should not be imposed.

The case of the petitioner is that when the punishment of

compulsory retirement inflicted on him was set aside, it should have been deemed that the petitioner was in service right from the date of his suspension till the date of attaining his superannuation. In case any action has to be taken, it should be taken under the Andhra Pradesh Revised Pension Rules, 1980. The petitioner however, submitted his representation to the show cause notice dated 30.11.2000, on 12.1.2001. He pointed out in his representation that though High Court had proposed nominal cut in pension, proposed punishment of 20% cut was disproportionate. Respondent No.2 issued G.O.Ms.No.86, dated 09.5.2001, in which it was stated that compulsory retirement order dated 08.8.1989 was cancelled on the ground that charge Nos.1 to 4 had been proved and 10% cut in pension for a period of one year was awarded and the suspension period was treated as on-duty for the purposes of grant of pension. Therefore, the question, according to the petitioner, which falls for consideration was, whether the respondents were justified in imposing 10% cut in pension and whether the Government was justified in ordering that the period of suspension shall not be treated as on-duty for the purposes other than pension.

Counter affidavit has been filed by respondent No.1. It is stated in the counter that after the inquiry was completed and explanation had been submitted by the petitioner, the High Court, upon considering his explanation, sent up its recommendations to the Governor on 13.7.1988 to impose upon the petitioner the punishment of compulsory retirement from service. But, in view of the Full Bench decision of High Court in writ petition No.130 of 1988 reported in 1988 (2) ALT 356, the recommendations dated 13.7.1988 were recalled and the High Court imposed the punishment by itself, by order dated 08.8.1989. The petitioner, thereafter, filed appeal before the Government.

While the matter stood thus, the Supreme Court judgment in Civil Appeal No.2165-67 of 1989 came, by which, it was held that the power of imposing major punishments vests with the Government and the recommendations made by the High Court are binding upon

the Governor. The High Court addressed a letter dated 04.05.2000 to the Governor, recommending to set aside the order dated 08.8.1989 and in view of the gravity of the charges held proved against the petitioner, and in view of the fact that the petitioner had already attained the age of superannuation, the High Court recommended to take action as per Revised Pension Rules, 1980. The Governor accordingly issued orders on 09.5.2001, imposing 10% cut in pension for a period of one year, as the charges had been proved against the petitioner.

We have heard the learned Counsel for the parties.

The charges have been proved against the petitioner and there is no challenge to that and at no point of time, that was challenged. The only grievance of the petitioner is that after the order of compulsory retirement was revoked, no further punishment could be given to him. In fact, the High Court, in the facts and circumstances of the case, should have not recalled its recommendations made to the Governor. There was a Full Bench judgment of this Court reported in **The High Court of A.P. v. Govt. of A.P.**, by which, it had been declared that the High Court was the authority, which could impose major punishments on the Judicial Officers. Therefore, the High Court, after recommending compulsory retirement of the petitioner, to the Governor, recalled those recommendations and passed an order on its own. But, because of the judgment of the Supreme Court in the case of **T.L.N.Chary** (1 supra), there was a necessity to revise that order, but that was only a formality, as Supreme Court had categorically stated that though the order of punishment has to be issued by the Governor, the recommendations of the High Court were binding on him. Therefore, even after recalling the order passed by the High Court retiring the petitioner from service, the Court could have again sent the recommendations for his compulsory retirement, to the Governor, which were binding on the Governor. But, since the petitioner, by that time, would have retired in usual course, the High Court took a lenient view and addressed a letter on 04.5.2000 to the Governor, recommending to set aside its earlier order, but

recommended action against the petitioner under Revised Pension Rules, 1980.

For these reasons, we do not find any merit in the writ petition, which is accordingly dismissed. No order as to costs.

(BILAL NAZKI, J)

28-01-2006

(R.SUBHASH REDDY, J)

ajr